

Appeal from decision of the California State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease S-4909.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control which were the proximate cause of the failure.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal and delivery of the payment.

APPEARANCES: Robert H. Schnurbusch, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Robert H. Schnurbusch appeals from the April 19, 1979, decision of the California State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease S-4909. Appellant's lease terminated by operation of law for failure to pay the annual rental on or before February 1, 1979.

Appellant's rental check was received by the State Office February 2, 1979. The envelope was postmarked January 31, 1979. Before BLM issued an Oil and Gas Lease Termination Notice pursuant to 43 CFR 3108.2-1(c), appellant responded to the receipt for late payment as if it were a termination notice. His reasons were the same as stated on appeal: The check was dated February 1, 1979, because the rent was due on that date. It was deposited in his home mail box on January 26, 1979. Appellant disclosed that he has previously had problems with mail not being picked up on schedule from his home. He has held the lease for 7 years and has never been late paying annual the rental before.

BLM denied reinstatement because "the lessee did not show that failure to make timely payment was either justifiable or not due to a lack of reasonable diligence on the part of the lessee."

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law, except under limited circumstances not applicable here. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1976).

[2] In order for the failure to pay rental timely to be justifiable, the failure must be caused by factors outside the lessee's control which were the proximate cause of the failure. Emma Pace, 35 IBLA 143 (1978); Richard C. Corbyn, 32 IBLA 296 (1977); Adolph F. Muratori, 31 IBLA 39 (1977); Louis Samuel, 8 IBLA 268 (1972). Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-2(c)(2).

Payment was due at the BLM State Office on February 1, 1979. Appellant's check was not postmarked until January 31, 1979. Appellant has offered no evidence tending to show that he mailed the check early enough that the delay must have been beyond his control. He admits that he has had problems with his mail pickup before and hence should have been alerted to the danger of mailing the check from his

house. Therefore, he has not shown that he exercised reasonable diligence. See Albert R. Fairfield, 34 IBLA 133 (1978); Agnes M. French, 28 IBLA 282 (1976); Dolores M. Heggie, 28 IBLA 222 (1976). Nor has he shown a justifiable excuse for the delay.

Under 43 CFR 3108.2-1(c)(2) the burden of showing that the failure to pay the rental when due was justifiable is on the lessee. Appellant has failed to meet this burden. Carelessness or inadvertence do not justify late payment. Apostolos Paliombeis, 30 IBLA 153 (1977); Phillips Petroleum Co., 29 IBLA 114 (1977); Lula Mai Martin, 27 IBLA 360 (1976); Frank H. Crosby, 25 IBLA 60 (1976).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

I concur:

Newton Frishberg
Chief Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

Absolute diligence is not required.

I would hold that appellant has presented a prima facie showing of reasonable diligence, and reinstate the lease. Annie Mae Buckley, 44 IBLA 99, 105-06 (1979) (dissent).

Joseph W. Goss
Administrative Judge

44 IBLA 232

